

**Ajax Tool Works, Incorporated and Luis A. Diaz.**  
Case 13-CA-19938

August 17, 1981

**DECISION AND ORDER**

**BY CHAIRMAN FANNING AND MEMBERS  
JENKINS AND ZIMMERMAN**

On May 8, 1981, Administrative Law Judge J. Lee Benice issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.<sup>2</sup>

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Ajax Tool Works, Incorporated, Franklin Park, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1:

"1. Cease and desist from:

"(a) Interrogating employees about their union sympathies, desires, or activities, or those of other employees.

"(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act."

2. Substitute the attached notice for that of the Administrative Law Judge.

<sup>1</sup> Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf'd, 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

<sup>2</sup> The Administrative Law Judge failed to include in his recommended Order and notice a provision enjoining Respondent from "in any like or related manner" interfering with, restraining, or coercing employees in the exercise of their rights under the Act. We shall correct this inadvertent error by modifying the recommended Order and notice accordingly.

**APPENDIX**

**NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

The National Labor Relations Act, as amended, gives all employees the following rights:

To engage in self-organization

To form, join, or assist any labor organization

To bargain collectively through representatives of their own choosing

To engage in any other concerted activities for the purpose of collective bargaining or other mutual aid or protection

To refrain from any or all these things.

WE WILL NOT interfere with, restrain, or coerce employees in the exercise of these rights. More specifically,

WE WILL NOT interrogate employees regarding their union sympathies, desires, or activities, or those of other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

**AJAX TOOL WORKS, INCORPORATED**

**DECISION**

**STATEMENT OF THE CASE**

J. LEE BENICE, Administrative Law Judge: The charge in this case was filed on May 19, 1980, by Luis Diaz, an individual. On June 27, 1980, the complaint issued alleging that Respondent discharged Diaz in violation of Section 8(a)(3) of the Act and interrogated employees in violation of Section 8(a)(1). Thereafter, the complaint was amended to delete the allegation related to the discharge. Respondent, in its answer, denies that it has committed any unfair labor practices.

The case presents these issues: Whether Piotr (Peter) Piotrowski, the "leadman" on the night shift at Ajax Tool Works, was a supervisor within the meaning of Section 2(11) of the Act; whether Piotrowski (if he was a supervisor) and David Shea, an admitted supervisor, questioned certain employees on behalf of the Company concerning their union activities; and, if this questioning did occur, whether it amounted to unlawful interrogation in violation of Section 8(a)(1).

A hearing was held before me in Chicago, Illinois, on January 27 and 28, 1981. The case was orally argued. A memorandum was submitted by the General Counsel at the oral argument, and a post-hearing brief was filed by Respondent. After the close of the hearing, the General Counsel filed a motion to correct transcript. The motion

is unopposed, and the changes requested are consistent with my recollection. Accordingly, the motion is granted and will be received in evidence as General Counsel's Exhibit 7.

Upon the entire record in this case, including my observation of the witnesses and their demeanor, I make the following:

#### FINDINGS AND CONCLUSIONS

##### I. THE BUSINESS OF RESPONDENT

Respondent is engaged in the manufacture of small forged chisels. During a representative 1-year period, it shipped goods valued in excess of \$50,000 from its plant in Illinois directly to points outside the State of Illinois. I find that Respondent is an employer engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.

##### II. THE LABOR ORGANIZATION INVOLVED

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America—UAW, referred to in this Decision as the Union, is a labor organization within the meaning of Section 2(5) of the Act.

##### III. THE ALLEGED UNFAIR LABOR PRACTICES

###### A. *Credibility of Witnesses—General Observations and Conclusions*

A few preliminary observations and conclusions will provide the necessary groundwork for a number of credibility determinations that appear in succeeding sections of this Decision.

Conflict repeatedly occurs between the testimony of Company President Robert J. Benedict and that of his forge shop foreman, David Shea, on the one hand, and, on the other, that of Rolando Olivo and Severino Villegas, two currently employed machine operators; Luis Diaz, a former machine operator; and Peter Piotrowski, the "leadman" on the night shift. As current employees, Olivo and Villegas had a strong incentive to testify truthfully in the presence of company officials. They were direct, precise, and forthcoming in their answers, almost completely consistent with each other although sequestered, and by their manner gave every impression of truthfulness as they spoke. Diaz was only slightly less impressive. He, too, was direct and forthcoming, and his testimony meshed with that of Olivo and Villegas and most of that of Peter Piotrowski. I have credited these three employees in all material respects.

Piotrowski, an alleged supervisor, appeared to be generally candid and truthful in response to the General Counsel's questions, but his subsequent responses under questioning by Respondent's counsel were less candid, were frequently inconsistent with his earlier testimony, and demonstrated that he was easily led by Respondent's counsel. Where internal inconsistencies appeared in his testimony, I have credited the testimony he gave in response to the General Counsel's questioning.

David Shea, the forge shop foreman, gave less direct answers, and his general demeanor failed to convey the impression of candor and truthfulness. On the crucial issues of the case, his testimony avoided commitment. I do not find him generally credible, and where his testimony conflicted with that of Piotrowski, Olivo, Villegas, or Diaz, I have credited the others.

There is a similar problem with the testimony of Company President Robert J. Benedict. Many of Benedict's answers were evasive, and he rarely seemed candid when the issue was controversial. I do not give full weight to his testimony on such controversial issues.

###### B. *The Supervisory Status of Peter Piotrowski*

###### 1. The facts

In April, May, and June, 1980, the night shift at Respondent's plant consisted of approximately 30 hourly rated employees (approximately one-third of the Company's total) working in two departments, the forge shop and the machine shop, from 4 p.m. to 1:30 a.m. The foreman of the forge shop, David Shea, and the foreman of the machine shop, Joe Capriatti, both of them admitted supervisors, worked on the day shift and were usually out of the plant by 5 p.m., leaving only a single "leadman," Peter Piotrowski, with any responsibility for the two departments on the night shift.

Piotrowski did not speak English well, but spoke it well enough to be understood. He was knowledgeable in the operation of the plant and its machinery, especially in the machine shop. He knew the entire line of chisels produced by the Company, with their thousands of minor variations, and knew all of the machine settings and adjustments necessary to produce each variety. Piotrowski's hourly pay rate was the highest in the plant.<sup>1</sup> As an hourly rated employee, he punched a timeclock and received no pay when he did not come in to work. All of his superiors were salaried. Piotrowski reported daily at 3 p.m., an hour before the rest of the night shift. Between 3 and 4 p.m., Shea and Capriatti briefed him on the production to be run in their respective departments when the night shift came on. Then they generally left him to implement their instructions. When the night shift began at 4 p.m., Piotrowski assigned employees to particular tasks and to particular machines<sup>2</sup> in a manner consistent with Shea's and Capriatti's instructions. In the machine shop, at least, this meant that he decided which of the 18 employees worked on which machines; in the

<sup>1</sup> Benedict testified that Piotrowski's wage was that of a setup man and reflected the going wage for such a skill, but the Company's other setup men all had lower hourly rates than Piotrowski.

<sup>2</sup> Diaz, Olivo, and Villegas all so testified, as did Piotrowski initially. However, in response to leading questions from counsel for the company, Piotrowski subsequently agreed with counsel that Shea and Capriatti assigned night-shift personnel to machines. And Shea then testified that after 4 p.m. he personally showed each of the 12 forge shop employees where to stand. In this situation, I do not credit Piotrowski's "yes" answer to counsel's leading question, but credit instead his initial, spontaneous, and somewhat detailed answer, corroborated as it was by three witnesses each of whom I have found to be more credible than Shea. I also note that it is un rebutted that Shea and Capriatti did not always stay past 4 p.m. Thus the task of assigning the men most likely would have fallen to Piotrowski on some occasions in any event.

forge shop, the decision was apparently made by the foreman and passed along to Piotrowski to be implemented on the night-shift.<sup>3</sup>

When employees arrived for work, they checked with Piotrowski to learn what to do, because Piotrowski changed their assignments frequently. Usually they worked on the same machine as the previous day, but sometimes they were reassigned, and often they were given a new task on the same machine. When an employee had produced enough of a particular item or had finished a specific job during the night shift, Piotrowski reassigned him to another task.

Piotrowski was expected to "set up" any machines for the production run, where necessary. Often, however, this was unnecessary, because many employees could set up their own, and some of the machines were already set up from the day shift. Piotrowski also made adjustments in the settings from time to time, as needed, and sometimes attempted to repair a machine that broke down on his shift. When a machine broke down, he assigned the operator to another machine or gave him a different job to do.

When he was not setting up or adjusting machines or directing other employees, Piotrowski mainly sat at his desk and read.<sup>4</sup>

Piotrowski had no authority to hire, fire, or transfer employees on his own initiative. However, he was responsible on the night shift for seeing that the production requirements and quality standards were met and that discipline was maintained.

On one occasion when Villegas handled an order incorrectly, Piotrowski rejected it and required Villegas to do it over again. On another occasion, Piotrowski stopped Villegas from attempting to repair his machine because Villegas' job, according to Piotrowski, was to operate, not repair the machine.

Piotrowski enforced the 10-minute limit on coffee-breaks and saw that the employees kept working when they were supposed to be working. If an employee took too long in the washroom or on a coffeebreak, Piotrowski ordered him back to work. And Piotrowski's orders were generally obeyed, presumably because of the power behind them. He once sent an employee, Juan Bolano, home (with consequent loss of pay) for spending too much time reading novels in the washroom. On another occasion, Piotrowski got into an argument with an

employee, Abraham Paz, in the washroom and threatened to get him fired. Paz was fired.<sup>5</sup>

On more than one occasion Piotrowski sent men home who were too drunk to work safely, and Respondent concedes that he was authorized to do this. Piotrowski had instructions to call the plant manager or company president whenever he had an emergency problem that he could not handle, but the evidence does not indicate that this happened frequently.

In the eyes of the employees who testified, Piotrowski was the equivalent of a supervisor. And, according to his own testimony, he saw himself as being "in charged," even to the point of identifying his job as that of "supervisor" of the night shift, when first asked on the witness stand to state what it was.

If an employee failed to punch a timecard, Piotrowski initialed the card to vouch for the time. Employees were required to report to him if they wanted time off.

At appropriate times, Piotrowski also discussed with the foremen the question of whether particular employees should receive raises, and Piotrowski testified that he made recommendations. The two company witnesses, on the other hand, claimed that he did not. The real difference between them could very well boil down to how formal a "recommendation" was actually made. But the obvious fact is that unless someone in the Company asked Piotrowski for some kind of evaluation—at least of the employee's conduct or attitude on the job (a factor admittedly considered before any employee was given a raise)—the Company would never have been able to make an informed determination about a prospective raise, since Piotrowski was the only well-informed person on the subject of conduct and attitude.

Piotrowski was the only night-shift employee with the keys to the plant and to a desk containing valuable company property. He locked the plant each night after everyone had left.

## 2. Concluding findings

Although many of his tasks were routine, and some were clearly those of a skilled employee rather than a supervisor, the facts set forth above show that Piotrowski was solely responsible for the plant, for the entire night shift of 30 men in two departments, for meeting the shift production requirements, for the quality of the shift production, and for maintaining discipline. If he were not a supervisor, the entire night shift—one-third of Respondent's entire work force—would have been without supervision of any kind from about 5 p.m. until 1:30 a.m. each night.

I find that Peter Piotrowski was a supervisor within the meaning of Section 2(11), with authority to responsibly direct the work of other employees.

<sup>3</sup> Concerning the practice in the forge shop, I credit the testimony of Roberto Olivo, who worked there during the period in question. He stated that Shea decided which employee would handle which machine in that department, and that Piotrowski informed the employee. Although Piotrowski initially appeared to testify that he made the assignments in both shops, he probably was speaking only of the machine shop at the time. When he testified, he was no longer in charge of the forge shop, and he frequently testified about current practices when asked about those of the earlier period in question. There being no evidence that his responsibilities in the machine shop have been changed since the earlier period, I credit his testimony as applying to assignments in the machine shop.

<sup>4</sup> Although Benedict testified that Piotrowski operated machines when there was no one else available and if such production was essential, I credit those witnesses who are normally present in the plant on the night shift and who testified, in effect, that they never saw Piotrowski operating a machine longer than necessary to check its setting.

<sup>5</sup> The incidents described in this paragraph were recounted in the testimony of the three credible witnesses who were workers at Ajax at the time of the incidents, and none of this testimony was ever specifically rebutted. The company witnesses both testified generally to the effect that Piotrowski had no such authority, but they never disputed the specific illustrative examples themselves. Accordingly, I have credited the specific testimony and discredited the generalities.

### C. *The Alleged Interrogations*

#### 1. The facts

During April and early May 1980, Luis Diaz actively began organizing Respondent's employees on behalf of the Union, and word of this activity quickly spread throughout the plant. Management admittedly was aware of the talk in the plant. About this time, as Luis Diaz and several fellow workers were having coffee one day in the company cafeteria, Piotrowski approached them and asked, "What is happening? Are you forming the union?" Diaz answered that they were merely talking about baseball. Piotrowski responded that he had thought that they were talking about the Union; and then he left. Similar conversations were repeated two or three more times within the next few days, always when two or three employees had gathered to have coffee. Always Piotrowski used the words "Are you forming the union?" And always Diaz denied it.<sup>6</sup>

On the morning of May 12, 1980, near employee Roosevelt Hill's work station, and in the presence of Diaz and some unnamed workers, Shea asked Olivo, "Are you in the union?"<sup>7</sup> Three days later, as Olivo and some fellow employees were standing near the bulletin board, on which there was a notice concerning a future union meeting, Shea came along, read the notice, and remarked, "That is garbage. If you want to go, go, but that won't help you."

On May 15, Piotrowski approached employees Villegas and Bolano near the coffee machine and asked, "Are you talking about the union, or what?" In response, Villegas denied talking about the Union. About one week later, in the same location, Piotrowski again asked them if they had been talking about the union, and Villegas again replied that they had not.<sup>8</sup>

#### 2. Concluding findings

Concerning both Piotrowski's repeated inquiries into whether employees were forming a union or discussing union activities, and Shea's questioning of Olivo concerning his possible union membership, I find that the nature of the questioning; the lack of justification for it; the number of times it was repeated; the fact that it occurred at an early stage of an organizing campaign, when it would be intimidating to employees who were affiliated with the Union or were considering affiliation; the fact that Shea's questioning of Olivo provoked the employee into giving his supervisor a dishonest answer; and Shea's declaration of hostility toward the Union, all taken together support the conclusion that Respondent's interrogation would reasonably tend to interfere with the exer-

<sup>6</sup> Diaz testified to these conversations, without contradiction. Significantly, counsel for Respondent never asked Piotrowski about these conversations.

<sup>7</sup> Olivo so testified, and this testimony was never clearly contradicted. Shea's sweeping denials, upon closer scrutiny, did not necessarily even cover this incident. Benedict testified that when it appeared that an organizing campaign was in progress, he instructed his foremen not to discuss the union activity with the employees. However, such testimony does not overcome the evidence there that the questioning nonetheless occurred.

<sup>8</sup> Villegas so testified without contradiction.

cise by the employees of their Section 7 rights. The interrogations thus violated Section 8(a)(1) of the Act.

#### IV. THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that Respondent be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the act. Because many of Respondent's employees speak and read Spanish as their native language and know little or no English, Respondent will be required to post notices in both languages on forms provided to it by the Regional Director for Region 13.

Upon the basis of the foregoing findings of fact and the entire record in this case, I make the following:

#### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America—UAW is a labor organization within the meaning of Section 2(5) of the Act.

3. By coercively interrogating employees concerning their union activities, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and upon the entire record and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

#### ORDER<sup>9</sup>

The Respondent, Ajax Tool Works, Incorporated, Franklin, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from interrogating employees about their union sympathies, desires, or activities, or those of other employees.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Post at its Franklin Park, Illinois, place of business copies of the attached notice marked "Appendix."<sup>10</sup> Copies of said notice, in both Spanish and English,<sup>11</sup> on forms provided by the Regional Director for Region 13, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof,

<sup>9</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

<sup>10</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

<sup>11</sup> The Regional Director, as part of the compliance process, shall be responsible for having the attached notice translated into Spanish prior to the posting period.

and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices are customarily posted. Reasonable steps shall be

taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.